

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT MCDOWELL

Petitioner,

v.

THERESA DELBALSO, et al.,

Respondents.

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:
: CIVIL ACTION
:
: No. 2:18-cv-01466-AB
:
:
:

FILED

JAN 03 2020

KATE BARKMAN, Clerk
By _____ Dep. Clerk

ORDER

AND NOW, this 3 day of January, 2020, upon consideration of the Petition for Writ of Habeas Corpus, inclusive of all exhibits thereto, the Commonwealth's Response, inclusive of all exhibits thereto, the other documents filed by the parties, and after review of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells, is **ORDERED** that:

1. The Report and Recommendation is **APPROVED AND ADOPTED**;
2. The Petition for a Writ of Habeas Corpus is **GRANTED**, with respect to Petitioner's claim that trial counsel was ineffective for failing to object to the reasonable doubt jury instruction provided at his trial; within ninety (90) days of this Order, the Commonwealth must retry Petitioner or release him from all custody; and
3. Claims Two and Three are **DEFERRED**, inasmuch as the writ is being granted on other grounds.



ANITA B. BRODY, J.